

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **EASTERN DISTRICT OF PENNSYLVANIA**

4 JAMES D. BUTLER, III,)

5 Plaintiff)

6 v.)

7 NCO FINANCIAL SYSTEMS, INC.,)

8 Defendant)

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

9
10 **COMPLAINT**

11 JAMES D. BUTLER, III (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN,
12 P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):
13

14 **INTRODUCTION**

15 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15
16 U.S.C. § 1692 *et seq.* (“FDCPA”), which prohibits debt collectors from engaging in abusive,
17 deceptive, and unfair practices and the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et*
18 *seq.* (“TCPA”).
19

20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
22 that such actions may be brought and heard before “any appropriate United States district court
23 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original
24 jurisdiction of all civil actions arising under the laws of the United States.
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3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Hartford, Connecticut, 06105.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

12. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

13. Within the one year prior to the filing of this Complaint and continuing through June 2011, Defendant made continuous and repeated calls to Plaintiff in an attempt to collect a consumer debt from Plaintiff.

1 14. Defendant, its employees and servants harassed Plaintiff by making continuous
2 calls and leaving voicemail messages on Plaintiff's home telephone number.

3 15. Defendant placed repeated calls to Plaintiff's telephone almost every day,
4 causing Plaintiff to receive, on average, more than two (2) collection calls a day and, at times,
5 more than four (4) collection calls a day.

6 16. Defendant's repeated telephone calls to Plaintiff caused him to receive on
7 average, more than twenty (20) collection calls a month.

8 17. Upon information and belief, Defendant used an automated telephone dialing
9 system or pre-recorded or artificial voice when contacting Plaintiff on his home telephone.
10

11 18. Defendant left several voicemail messages on Plaintiff's home answering
12 machine, each using a pre-recorded voice.

13 19. Plaintiff did not expressly consent to Defendant's placement of telephone calls to
14 his home telephone by the use of an automatic telephone dialing system or pre-recorded or
15 artificial voice prior to Defendant's placement of the calls.

16 20. None of Defendant's telephone calls placed to Plaintiff were for "emergency
17 purposes," as specified in 47 U.S.C. §227(b)(1)(A).

18 21. Defendant's actions in attempting to collect the alleged debt were made with the
19 intent to harass, abuse, annoy, and deceive Plaintiff into making payment.
20

21 22. Defendant intentionally engaged in this course of conduct stated above, to
22 intimidate, mislead, cajole and confuse Plaintiff.
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24
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CONSTRUCTION OF APPLICABLE LAW***THE FAIR DEBT COLLECTION PRACTICES ACT***

23. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

24. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f. The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in connection with the collection of a debt.

25. In enacting the FDCPA, the United States Congress found that “[t]here is

1 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
2 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
3 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
4 additionally found existing laws and procedures for redressing debt collection injuries to be
5 inadequate to protect consumers. 15 U.S.C. § 1692b.

6
7 26. Congress enacted the FDCPA to regulate the collection of consumer debts by
8 debt collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
9 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
10 collection practices are not competitively disadvantaged, and to promote consistent State action
11 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

12 27. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
13 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer
14 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.
15 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
16 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status
17 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

18 28. The FDCPA is a remedial statute, and therefore must be construed liberally in
19 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
20 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
21 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the
22 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
23 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
24 2002).
25

29. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

30. In 1991, Congress enacted the TCPA, in response to a growing number of consumer complaints regarding certain telemarketing practices.

31. The TCPA regulates, among other things, the use of automated telephone equipment, or "autodialers." Specifically, the plain language of section 227(b)(1)(B) prohibits the use of autodialers to make any call to a residential telephone line in the absence of an emergency or the prior express consent of the called party.

32. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a

1 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly
2 and inconvenient.

3
4 **COUNT I**

5 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

6 33. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
7 more of the following ways:

- 8 a. Defendant violated of the FDCPA generally;
- 9 b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
10 connection with the collection of an alleged debt;
- 11 c. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
12 telephone to ring repeatedly or continuously with the intent to harass, annoy
13 or abuse Plaintiff;
- 14 d. Defendant violated §1692e of the FDCPA by using false, deceptive, or
15 misleading representations or means in connection with the collection of a
16 debt;
- 17 e. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
18 means with Plaintiff to collect or attempt to collect a debt; and
- 19 f. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
20 and failed to comply with the FDCPA.
- 21
22

23 **COUNT II**

24 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

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1 32. Plaintiff hereby incorporates all facts and allegations specified in all preceding
2 paragraphs, by reference as if fully set forth at length.

3 33. Section 227(b)(3)(A) of the Act authorizes a private cause of action for a person
4 or entity to bring in an appropriate court of that state “an action based on a violation of this
5 subsection or the regulations prescribed under this subsection to enjoin such violation.”

6 34. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person
7 or entity to bring in an appropriate court of that state “an action to recover for actual monetary
8 loss from such a violation, or to receive \$500 in damages for each such violation, whichever is
9 greater.”

10 35. Defendants’ conduct violated § 227(b)(1)(B) of the TCPA by making any call
11 using any automatic telephone dialing system or an artificial prerecorded voice to any residential
12 telephone line without the prior express consent of the called party, unless the call is initiated for
13 emergency purposes.

14 36. The Act also authorizes the Court, in its discretion, to award up to three (3) times
15 the actual damages sustained for violations.

16
17 WHEREFORE, Plaintiff, JAMES D. BUTLER, III, respectfully prays for a judgment as
18 follows:

- 19 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
20 1692k(a)(1);
- 21 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant
22 to 15 U.S.C. § 1692k(a)(2)(A);
- 23 c. All reasonable attorneys’ fees, witness fees, court costs and other litigation
24 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
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- 1 d. Statutory damages of \$500 for each violation of the TCPA, pursuant to 47
2 U.S.C. § 227(c)(5)(B); and
3 e. Any other relief deemed appropriate by this Honorable Court.
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5 **DEMAND FOR JURY TRIAL**

6 PLEASE TAKE NOTICE that Plaintiff, JAMES D. BUTLER, III, demands a jury trial
7 in this case.
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11 RESPECTFULLY SUBMITTED,

12 DATED: 08-02-11

KIMMEL & SILVERMAN, P.C.

13
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